

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.s.

Meeting Type: Regular

Meeting Date: Mar 24, 2016

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Real Estate Purchase Agreement and Amendment Number One to Agreement to purchase real property for the Greenbrier Road Project.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Real Estate Agreement between the City of Huntsville and the Estate of Janice V. Greene approved by the Probate Court of Limestone County, Alabama, on February 29, 2016, as modified by Amendment Number One to said agreement.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

The original agreement as approved by the Limestone County Probate Court, has a clause wherein the agreement is binding if executed by both parties on or before February 29, 2016. Since that date has passed without the City executing the agreement, Amendment Number One amends that clause to state the agreement must be executed on or before April 30, 2016.

Associated Cost: \$222,500.00

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Mary C. Carter

Date: 3-22-2016

RESOLUTION NO. 16-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Real Estate Agreement by and between the City of Huntsville, Alabama, and The Estate of Janice V. Greene, approved by the Probate Court of Limestone County, Alabama, on February 29, 2016, as modified by Amendment Number One to said agreement, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Real Estate Agreement and Amendment Number One to Real Estate Agreement between the City of Huntsville and The Estate of Janice V. Greene," consisting of nine (9) pages including Exhibit "A" to the Real Estate Agreement, and the date of March 24, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 24th day of March, 2016.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 24th day of March, 2016.

Mayor of the City of
Huntsville, Alabama

12-22-2015

REAL ESTATE AGREEMENT

This Real Estate Agreement (this "Agreement") is entered into as of the 28 day of December, 2015, by and between **THE CITY OF HUNTSVILLE**, an Alabama municipal corporation (hereinafter referred to as "Purchaser") who agrees to purchase the real property described in Section One (1) from **THE ESTATE OF JANICE V. GREENE**, deceased, (hereinafter referred to as "Seller"), who agrees to sell the Property. In consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt of such by Seller is hereby acknowledged, the parties hereby agree as follows:

1. Sale and Purchase.

Seller hereby agrees to grant, bargain, sell and convey to Purchaser that certain real property located at 6774 Greenbrier Road, Madison, Alabama (hereinafter referred to as the "Property") and more particularly described in Exhibit "A" attached hereto.

2. Purchase Price.

The Purchase Price for the Property shall be TWO HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$220,000.00), which shall be payable at Closing.

3. Conditions of Sale.

(A) Purchaser's obligation to close on the purchase of the Property is contingent upon the following:

(1) Purchaser's written approval of an owner's title commitment from Wilmer & Lee, P.A. Purchaser shall have forty-five (45) days from the date of this Agreement in which to obtain and review the title commitment. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event any matters of title are unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable title concerns by giving Seller written notice of the termination within forty-five (45) days of the date of this Agreement.

(2) The results of a survey being acceptable to Purchaser. Purchaser shall have forty-five (45) days from the date of this Agreement in which to obtain a survey of the Property. Seller hereby grants access to the Property to Purchaser and Purchaser's surveying

President of the City Council of the
City of Huntsville, Alabama
Date: _____

consultants to survey the Property. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event the survey is unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable survey concerns by giving Seller written notice of the termination within forty-five (45) days of the date of this Agreement.

4. Title.

The Property shall be conveyed to Purchaser by General Warranty Deed, satisfactory in manner and form to Purchaser and in accordance with the laws of the State of Alabama; conveying the Property, free and clear of all liens, encumbrances and other matters affecting title except a lien for taxes not yet due and payable, matters of survey, and existing easements and restrictions of record. Any existing mortgages on the Property shall be paid and/or satisfied at or prior to Closing. Seller shall provide customary affidavits in order to establish clear title to the Property.

5. Closing.

The Closing shall take place within sixty (60) days after approval of the transaction by City Council and signing of the Agreement by the Mayor, if all contingencies are met. The parties further agree as follows:

- a. Real property taxes for the current year shall be prorated between Seller and Purchaser as of the Closing Date.
- b. Seller shall deliver an affidavit attesting that there are no liens and that Seller is in sole possession of the Property.
- c. Purchaser shall pay all costs of Closing, other than as specifically stated herein. Each party shall pay its own attorneys' fees in connection with this transaction.
- d. Seller shall provide a General Warranty Deed at Closing, to be prepared by Purchaser's counsel, at Purchaser's expense. Seller shall have all heirs of Janice V. Greene, deceased, execute the General Warranty Deed.

6. Relocation.

Purchaser will be responsible for reimbursing Seller for reasonable moving expenses incurred by Seller in removing and relocating personal belongings from the Property in an amount not to exceed \$2,500.00.

7. Court Approval.

As title to the Property is held in the name of Janice V. Greene, now deceased, and the will of Janice V. Green does not contain a power of sale, Seller agrees to obtain a court order approving the sale described in this Agreement.

8. Commissions.

The parties represent that neither has incurred nor is obligated for any brokers' or finders' fees, and that no real estate commissions are due on account of this transaction. Each party agrees to indemnify, defend and hold the other harmless from any claims, including attorneys' fees, that they may suffer as a result of any claim or action brought by any broker or real estate agent, acting on behalf of that party.

9. Time of the Essence.

Time is of the essence of this Agreement.

10. Attorneys' Fees.

In the event of a dispute between the parties pursuant to the terms of this Agreement, the prevailing party in any court of competent jurisdiction shall be entitled to collect reasonable attorneys' fees. In the event of dispute, the provisions of this Agreement shall not be construed against the party drafting this Agreement.

11. Successors.

All rights and obligations of Seller and Purchaser under this Agreement shall inure to the benefit of and be binding upon their successors and assigns. Purchaser reserves the right to assign its interest in this Agreement.

12. Amendment.

No modification or amendment of this Agreement shall be of any force or effect unless the same shall be made in writing and executed by each party hereto. To the extent that escrow, closing

or settlement instructions and/or documents are inconsistent with the terms and conditions of this Agreement, this Agreement shall control and shall further survive recordation of the deed.

13. Entire Agreement.

This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been relied upon by either party. Each party has had a full opportunity to examine this Agreement and/or has had an opportunity to have its counsel review said Agreement on its behalf.

14. Interpretation.

This Agreement shall be interpreted in accordance with Alabama law, without regard for Alabama's conflict of law provisions. Unless otherwise provided, all terms shall have the meaning given them in ordinary and customary English usage. The section headings and title of this Agreement do not form a part of this Agreement, are inserted for convenience of reference only, and shall have no effect upon the construction or interpretation of any part of this Agreement.

15. Email or Facsimile Signatures.

The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or similar electronic transmission. Upon transmission and receipt by another party, such signature shall be effective as an original. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the other parties and their counsel promptly after execution.

16. Execution by Counterpart Originals.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Counsel Acknowledgment.

The parties all acknowledge that Purchaser's counsel, JOSEPH A. JIMMERSON, and the law firm of Wilmer & Lee, P.A. (collectively "Counsel") prepared this Agreement on behalf of and in the course of his representation of Purchaser. For the purposes of this transaction, Counsel represents Purchaser's interest and no other interests. Any conflicts of interest due to Counsel's representation of Purchaser are hereby waived.

18. Waiver.

The waiver of default by either party of any provision of this Agreement shall not operate as a waiver of subsequent defaults.

19. Corporate Authority.

The parties acknowledge that all necessary action has been taken to authorize the entering into of this Agreement of behalf of each party. The parties acknowledge that once this Agreement is signed by the persons shown below, the Agreement is binding on the parties.

20. Acceptance.

In order to be binding, a copy of this Agreement must be executed by both parties on or before 5:00 p.m. C.D.T., on February 29, 2016.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the respective dates set forth below.

PURCHASER:
THE CITY OF HUNTSVILLE


By: _____
Its: Mayor
Tommy Battle

WITNESS:

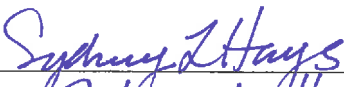
Kenneth Benion
Clerk-Treasurer

Date: March 24, 2016

SELLER:


By: **PAUL D. GREENE**
Personal Representative of the
Estate of Janice V. Greene, deceased

WITNESS:


Sydney L. Hays

Date: 12/28/2015

Exhibit "A"

All that part of the Southwest Quarter of the Northwest Quarter of Section 34, Township 4 South Range 3 West of the Huntsville Meridian, more particularly described as beginning at a point that is North 02 degrees 45 minutes 30 seconds West 157.50 feet and North 87 degrees 14 minutes 30 seconds East 35.00 feet from the Northwest corner of the Southwest Quarter of the Northwest Quarter of Section 34, Township 4 South, Range 3 West. Said point is further described as being on the East margin of a public road; thence continuing North 87 degrees 14 minutes 30 seconds East 290.40 feet; thence South 02 degrees 45 minutes 30 seconds East 150.00 feet; thence South 87 degrees 14 minutes 30 seconds West 290.40 feet to a point on the east margin of a public road; thence North 02 degrees 45 minutes 30 seconds West along the East margin of said public road 150.00 feet to the point of true beginning. Said land lying and being in Limestone County, Alabama, and containing 1.0 acres, more or less.

**AMENDMENT NUMBER ONE
TO
REAL ESTATE AGREEMENT**

THIS AMENDMENT NUMBER ONE to the Real Estate Agreement is made and entered into on this the 24th day of March, 2016, by and between the CITY OF HUNTSVILLE, an Alabama municipal corporation ("Purchaser") and PAUL D. GREENE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JANICE V. GREENE, DECEASED ("Seller").

WHEREAS, on or about December 28, 2015, Seller executed a Real Estate Agreement to sell to Purchaser certain real property located at 6774 Greenbrier Road, Madison, Alabama; and

WHEREAS, section 20 of the Real Estate Agreement requires for the said Agreement to be signed by both parties by February 29, 2016 in order to be binding; and

WHEREAS, the City has not yet executed the said Real Estate Agreement; and

WHEREAS, the parties desire to extend the execution date of the Real Estate Agreement so that the transaction can be closed.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

Refer to section 20 of the Real Estate Agreement and between the parties dated December 28, 2015, delete in its entirety and cause to read as follows:

In order to be binding a copy of this Agreement must be executed by both parties on or before 5:00 p.m. C.D.T. on April 30, 2016.

All other terms and condition contained in the above referenced Real Estate Agreement, and not revised by this Amendment Number One, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first written above.

PURCHASER:

THE CITY OF HUNTSVILLE

By: _____
Tommy Battle
Its: Mayor _____

ATTEST:

By: _____
Kenneth Benion
By: City Clerk-Treasurer

SELLER:

By: Paul D. Greene
Paul D. Greene
Personal Representative of the Estate
of Janice V. Greene, deceased

WITNESS:

By: Sharon L. Cleaver
SHARON L. CLEAVER

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 3/24/2016

Department Contact: Trey Riley

Phone # 427-5026

Contract or Agreement: Real Estate Agreement and Amendment

Document Name: Real Estate Agreement for Greenbrier Road property

City Obligation Amount: \$222,500

Total Project Budget: \$222,500

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Not Applicable

Not Applicable

Grant-Funded Agreements

Not Applicable

Grant Name:

Department	Signature	Date
1) Originating	<i>Mary C. Cates</i>	<i>3-22-2016</i>
2) Legal	<i>Mary C. Cates</i>	<i>3-22-2016</i>
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		